## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J.D., by and through his

Parents and legal guardians, ANDREZA: LOPEZ DASILVA and JOSE DASILVA:

Plaintiffs, : No. 20-1395-ER

:

VS.

TEMPLE UNIVERSITY HOSPITAL, INC., et al.,

Defendants.

belendants.

## **PLAINTIFFS' STATUS REPORT**

Pursuant to the Court's May 20, 2021 Order in this matter, Plaintiffs, Andreza Lopez DaSilva and Jose DaSilva on behalf of their minor son, J.D., ("Plaintiffs"), hereby provide the following status report:

- 1. The U.S Department of Health and Human Services ("HHS") has deemed Dr. Clinton Turner a federal employee because he was acting within the scope of his employment with the U.S. Public Health Service at the time of the incident giving rise to this Complaint.
- 2. On November 13, 2019, Plaintiffs placed HHS on notice of a "claim for damage, injury, or death" via Standard Form 95.
- 3. On April 20, 2020, HHS denied Plaintiffs' administrative tort claim, and advised Plaintiffs via counsel that if they were dissatisfied with the determination, they were entitled to file a written request with the Agency for reconsideration of the final determination denying the claim within six (6) months from the date of mailing of HHS's determination (28 C.F.R. § 14.9); or file suit against the United States in the appropriate federal district court within six (6) months from

the date of mailing of HHS's determination (28 U.S.C. § 2401 (b)).

4. On October 19, 2020, Plaintiffs requested that the US Department of Health and

Human Services ("HHS") reconsider its April 20, 2020 denial of the administrative tort claim of

Joshua DaSilva, a minor.

5. Pursuant to 28 C.F.R. § 14.9(b), HHS had six (6) months from the date Plaintiffs

filed their request for reconsideration to make a final disposition of the claim; Plaintiffs' option

under 28 U.S.C. 2675(a) does not accrue until six (6) months after the filing of their request for

reconsideration.

6. Six months from October 19, 2020 was April 19, 2021.

7. HHS failed to provide final disposition of Plaintiffs' claim within six (6) months of

October 19, 2020, the date which Plaintiffs filed their request for reconsideration.

8. Accordingly, HHS's failure to make final disposition shall be deemed a final denial

for the purposes of 28 U.S.C. 2675(a), and now, having exhausted their administrative remedies,

Plaintiffs are permitted to institute their claim against the United States of America for money

damages for injuries sustained due to the negligence of US government employee, Dr. Clinton

Turner.

9. Contemporaneous with the filing of this Status Report, Plaintiffs have filed a

Motion for Leave of Court to Amend Plaintiffs' Complaint to Assert a Claim against the United

States of America.

Respectfully submitted,

/s/ Joseph L. Messa, Jr.

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